

NAJAM, Judge

STATEMENT OF THE CASE

Rodriguez Dupree Bell appeals from the trial court's order revoking his probation.

He presents the following issues for our review:

1. Whether the trial court's continuances of the evidentiary hearing are evidence of judicial bias against Bell.
2. Whether the State presented sufficient evidence that Bell violated the terms of his probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 7, 2006, Bell pleaded guilty to Dealing a Sawed-off Shotgun and Possession of Cocaine. The trial court accepted the plea agreement and imposed an aggregate sentence of six years. On October 8, 2007, the trial court modified Bell's executed sentence to time served and ordered him to serve the remainder of his sentence on probation.

On April 9, 2008, the State filed a notice of probation violation alleging that Bell had been arrested and charged with five criminal counts, had failed to notify his probation officer of his change of address, and had failed to pay fees. At the probation revocation hearing on May 5, the trial court continued the hearing, sua sponte, because the State did not have any witnesses ready. Bell did not object to the continuance. On May 28, following testimony by one witness for the State, the following colloquy occurred:

TRIAL COURT: So I need more evidence that [Bell] resided [at the residence where police executed the search warrant]. His story is "I lived at . . . on Columbus Avenue." There is some evidence that that is his residence because he was carrying mail there, but it is possible. . . . I'm

thinking what's the Court of Appeals gonna say? If he lived with his dad on Columbus Avenue but he carried his mail down there to make a DVD or a CD, well, that explains that. But you got a live witness that says he's paying me rent or we've got another witness that says, hey we crash here. We crib here. I live here with him. Then that's his residence and then he's got constructive possession of all the firearms and the dope and I'll let the Court of Appeals sort it out. But based on the evidence so far, I can't get there. . . . So I'm almost there, but not quite. I'm looking at this like the Court of Appeals. So you get me a witness that says the man lives here or the man pays me rent or you get Steve First or . . . [a fingerprint expert] . . .

* * *

Do you want a continuance of this hearing so you can call a live witness?

PROSECUTOR: Apparently I need to.

TRIAL COURT: I think you do.

PROSECUTOR: Alright.

Transcript at 42-43. Bell did not object to the continuance.

On June 18, the evidentiary hearing resumed, and the trial court found that Bell had violated the terms of his probation. The trial court revoked Bell's probation and ordered him to serve 728 days incarceration. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Judicial Bias

Bell first contends that the trial court's "actions and statements during the three evidentiary hearings on Bell's probation violation showed nothing but partiality for the State, and prejudiced Bell." Brief of Appellant at 8. Bell maintains that the trial court should have dismissed the notice of probation violation on May 5, when the State was unprepared to proceed. Bell asserts that the trial court's sua sponte continuances of the hearing prove judicial bias. We cannot agree.

It is well established that a trial before an impartial judge is an essential element of due process. Ruggieri v. State, 804 N.E.2d 859, 863 (Ind. Ct. App. 2004). To assess whether the trial judge has crossed the barrier of impartiality, we examine both the trial judge's actions and demeanor. Id. However, we are mindful that the trial judge must be given latitude to run the courtroom. See id. These principles also apply to a probation revocation hearing.

In essence, Bell contends that the trial court was acting as an advocate on the State's behalf when it continued the hearing sua sponte. However, Bell did not object to either of the continuances. As such, the issue is waived. See id. (holding alleged judicial bias waived where defendant did not object to trial judge's conduct during trial or move for a mistrial).

Waiver notwithstanding, Bell has not demonstrated how he was prejudiced by the continuances. As the State points out, even if the trial court had dismissed the notice of probation violation, the State could have filed a new notice based upon the same alleged violations. See McQueen v. State, 862 N.E.2d 1237, 1243 (Ind. Ct. App. 2007) (observing that a violation of a condition of probation does not constitute an offense within the purview of double jeopardy analysis). Bell cannot prevail on this issue.

Issue Two: Sufficiency of the Evidence

Bell also contends that the State presented insufficient evidence to support the revocation of his probation. Probation is a matter of grace, and whether probation is granted is within the trial court's discretion. Morgan v. State, 691 N.E.2d 466, 468 (Ind. Ct. App. 1998). The sole question at a probation revocation hearing is whether the

probationer should be allowed to remain conditionally free or rather should be required to serve the previously imposed sentence in prison. Id. It is well settled that violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). If the court finds the defendant has violated a condition of his probation at any time before the termination of the probationary period, and the petition to revoke is filed within the probationary period, then the court may order execution of the sentence that had been suspended. Wilburn v. State, 671 N.E.2d 143, 147 (Ind. Ct. App. 1996), trans. denied.

Here, again, in its notice of probation violation, the State alleged in relevant part that Bell had been arrested on five criminal counts, including possession of cocaine, carrying a handgun without a license, and possession of marijuana. During the evidentiary hearing, the State presented evidence that, while on probation, Bell was residing in a house where police found weapons and cocaine, and police found Bell sitting on a loveseat where two guns and marijuana were found stashed under a cushion. That evidence is sufficient to support the trial court's revocation of his probation. See Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006) (noting proof of conviction of a new crime is not required to prove probation violation; trial court need only find there was probable cause to believe defendant violated a criminal law while on probation). Bell merely asks that we reweigh the evidence, which we will not do.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.